

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/338/2019

DATE: : FRIDAY 11TH MARCH, 2022

BETWEEN:

**INTRA ENGINEERING AND
TURNKEY LIMITED**



CLAIMANT

AND

**1. HAPPY EAGLE INVESTMENT
COMPANY LIMITED**

2. MR. WANG ZEXIN



DEFENDANTS

JUDGMENT

The Claimant commenced this action vide Writ of Summons and Statement of claim filed on 15th November, 2021 and dated same day, wherein the Claimant claims as follows:-

1. The sum of 10,000,000.00 (Ten Million Naira only) as general damages for breach of the terms of the Lease Agreement, by way of failure to observe the payment terms, subletting part of No. 5 Elbe Close, off Panama Street, Off IBB Way, Maitama, Abuja without consent and making structural alterations and defect to the entire No. 5 Elbe Close equally without the written consent of the Claimant.
2. An Order directing the Defendants to immediately vacate and yield up vacant

possession of No. 5 Elbe Close Off Panama Close, Off IBB Way, Maitama Abuja forthwith.

3. The sum of N29,403,000.00 (Twenty Nine Million, Four Hundred and Three Thousand Naira Only) being cost of estimated repair works to be carried out by the Claimant in Order to restore back No. 5 Elbe Close, Off Panama Close, Off IBB Way, Maitama, Abuja, FCT.
4. N500,000.00 (Five Hundred Thousand Naira Only) being Legal fees for prosecuting this suit.
5. 10% post Judgment interest, from the date of this Judgment until the Judgment sum is fully liquidated.

Defendants who were duly served the Writ of Summons and Statements of Claims, failed and or ignored to file their Statement of Defence.

Claimant opened its case and closed same without Defendants in Court, despite all the service of the Writ of Summons and Hearing Notices on the Defendants.

The case of the Claimant as distilled from the witness statement on oath deposed to by one Fatima Audu, An Estate Surveyor and Valuer, is that the 1st Defendant is a limited liability company incorporated in Nigeria with some of its Directors being Chinese Nationals, and carries on the business of general contracts, among other things, and has its address at Maitama, Federal Capital Territory, Abuja, equally within the jurisdiction of this Honourable Court.

That the 2nd Defendant is a Chinese National and carries on business of mining and hospitality, and is

a business associate/partner of the 1st Defendant, and has been resident and carrying on business in Abuja and Nigeria, for more than 5 years and counting, and mostly acts as the country representative to several businesses whose Directors are resident in China.

That it has and is seized of all that property known and referred to as No. 5 Elbe Close, Off Panama Street, Off IBB Way Maitama, Abuja, FCT, which comprises of three (3) units of three bedroom duplexes with boys quarters each and 3 units of four bedroom duplexes with each equally accompanied with boys quarters. That the property, No. 5 Elbe Close, Off Panama Street, Maitama, Abuja, is fully developed with amenities such as functional swimming pool, gym, and is fitted with air conditioners, refrigerators, water treatment plant, water pump, overhead tanks, well-tended lawn,

servant quarters etc. as at the time the property was let to the Defendants.

It is the claim of the Claimant that sometime in October, 2016, the 2nd Defendant together with one Anna, a Chinese Woman (now presently in Canada) approached the Claimant seeking to be let into No. 5 Elbe Close, Off Panama Street, Off IBB Way, Maitama, Abuja, FCT as tenants on a lease, subject to periodic payments. That the Claimant accepted the Defendant's offer and thereafter, a lease agreement for the entire property in No. 5 Elbe Close was let out to the 1st Defendant and the 2nd Defendant made payments for an initial one year rent and equally signed the Lease Agreement. That due to the Defendants plea for a rescheduling of the commencement date of the lease prior slated and agreed to commence on the 15th of November, 2016,

it was then re-scheduled to commence on the 1st of December, 2016 to enable the Defendants move their belonging into the property and take full possession.

The Claimant further claims that the annual rents for the lease of N22,400,000.00 (Twenty Two Million, Four Hundred Thousand Naira Only), in furtherance of which the Defendants paid for upfront of two(2) years rent of N44,800,000.00 (Forty Four Million, Four Hundred Thousand Naira Only), which was due to expire on the 30th of November, 2018.

That the Defendants were due to pay N22,400,000.00 (Twenty Two Million, Four Hundred Thousand Naira Only) in advance, from the 1st of December, 2018, in line with the terms of the Lease Agreement in Order to continue with the

Lease term. That the Defendants refused and or neglected to fulfil the terms of the Lease Agreement with respect to paying for the lease amount as at when due, rather, the 2nd Defendant started to shop for another partner to assist in the payment of the rent amount and in the process, the Claimant observed that the Defendant had built walls across a sloppy portion of the property originally made for waterway, which then caused part of the fence to collapse.

That the Claimant equally observed that lots of the amenities that were in good condition and state are no longer functioning due to mismanagement and poor handling and damages by the Defendants, like the gyms, swimming pool, air conditioner, etc and the Defendants had equally refused and or neglected to maintain the surroundings and leaking plumbing

pipes. Upon being approached by the Claimant, the 2nd Defendant promised to renovate the entire property, which they have equally refused and or neglected to carryout in order to restore the property to its original state. All in a bid to frustrate the terms of the Agreement, the 2nd Defendant through one of his business associates, ZILAN YU issued the Claimant a Zenith Bank Cheque dated the 18th of December, 2018 for N8,000,000.00 (Eight Million Naira only) which was returned unpaid as a result of no funds in the account. Being irked by the conduct of the Defendants, he engaged an Engineering Construction firm to do an assessment of the already dilapidating parts of the property, the firm of Jaji M.M Nigeria Limited were engaged by the Claimant, and after inspection of the property, they have brought out a schedule of claims for repair

works at No. 5 Elbe Close, Off Panama Street, Maitama, Abuja, FCT dated the 4th of January 2019, at the trial of this suit.

That as at the 4th of January, 2019 the cost that it will take to put the property back to the condition where it was before the Defendants took possession is N29,403,000.00 (Twenty Nine Million, Four Hundred and Three Thousand Naira only) excluding the further cost of deterioration and the collapse of the POP ceiling in one of the duplexes with digital pictures are attached to show level of damage as at the end of October, 2019.

It is further the claim of the Claimant, that the Defendants equally sub-let one of the units of 3 bedroom duplexes to another person, one Mr. Jesse Lee, without regard and the Claimant's consent, who

pleaded with agents of the Claimant to give him to vacate the premises and apartment amicably on the 31st of December, 2018. That the Claimant proceeded to issue the Defendants a Notice of Termination of Lease Agreement on the 3rd of May, 2019, for which the Defendants have equally failed and or neglected to obey or vacate. All efforts to get the Defendants to keep to the Lease Agreement has proved abortive, neither have the Defendant renovated or fixed the damaged part of the property. The Claimant is at the verge of losing his property to deterioration, destruction and unreasonable wear and tear as a result of the Defendants' conducts, reckless usage of the property and the deliberate damages caused by the Defendants who have resorted to bringing in all manner of Chinese Nationals into the premises to deface and damage the amenities. The

Claimant, recently in October observed the caving in of the POP work on one of the duplexes as a result of careless usage of the property, which resulted partly because of the cooking inside one of the sitting rooms instead of the kitchen. It will be a huge economic loss to him (the Claimant) if the Defendants are not made to pay damages for breach of contract and cost of renovation and fixing of the damaged aesthetics in the property as well as evicting the Defendants from the property.

PW1 tendered the following documents in evidence:

1. Lease Agreement Exhibit “1”
2. Notice of Termination of Lease Agreement Exhibit “2”
3. Photocopy of returned cheque of N8,000,000.00 (Eight Million Naira) Exhibit “3”

4. Handwritten undertaking to vacate one of the units of the apartments.
5. Schedule of claims for repair work at No. 5 Elbe Close Off Panama Street, Maitama Exhibit “5”
6. Certificate of Compliance with digital pictures (15 in number)

At the close of PW1 examination-in-chief, Suit was adjourned for Defendants to cross-examine PW1. On the adjourned date when the matter came up, the right of Defendants to cross-examine PW1 was foreclosed in view of Defendants’ absence without any reason. PW1 was discharged.

The Plaintiff closed its case to pave way for defence. Defendants did not file Statement of Defence and or any address.

The learned counsel for the Plaintiff formulated a sole issue for determination to wit;

- ***Whether the Claimant has proved its case on the preponderance of evidence in the circumstance of this case.***

It is the submission of learned counsel, that in a civil suit, like the one at hand, the evidential burden is on a preponderance of evidence and balance of probabilities. Sections 131(1)(2) and 132 of the Evidence Act, 2011 and ***IBIYEMI VS. FOJULE (2006) 3 NWLR (Pt. 968) Page 640 at 662 Paras B – C*** were cited.

Learned counsel further submits that PW1 in her adopted Witness Statement on Oath in paragraphs 7,8,9,10,11 and 12 had stated the nature of the Lease transaction between the Claimant and the

Defendants, and in paragraphs 13 and 14, she equally stated the amount payable to the Defendant and the time and commencement of the lease transaction. In Exhibit “1”, page two, paragraph 2(a)(b) and (c) stated the payment terms and paragraph 3(e), (f), (g), (i), (k), (l) clearly stated the restrictions against the Defendants which they have violated, by virtue of testimony of PW1 in paragraphs 15 – 25 coupled with the Exhibits “3”, “4”, “5” and “6” which all clearly shows the level of damage done to the property, at No. 5 Elbe Close, Maitama, Abuja – FCT.

Learned counsel further submits that the action of the Defendants warranted the Claimant’s counsel to issue Exhibit “2” against the Defendants which was acknowledged and they still remained adamant to their actions. In law, he who asserts must prove his

assertion by uncontradicted oral testimony and/or oral documentary evidence. And it is the responsibility of the Claimant to prove his case.

ATUNNA VS. LADEMKA (1998) 7 NWLR (Pt. 557) Page 221 at 228 – 229, Para H was cited.

Learned counsel also submits that in line with Exhibit “1” page 7, paragraph 7(ii), the issuance of Exhibit “2”, is in line with the terms of their Agreement freely entered into by the parties. Parties are bound by the terms of their Agreement freely entered into.

EDILCON (NIG) LTD. VS. UBA PLC (2017) LPELR 42342 (SC) was cited. The Claimant’s reliefs 1,2,3 are supported by paragraphs 3(e), 3(k), 3(i), in combination with paragraph 7 of Exhibit “1” which are documentary evidence supporting the

depositions in the Claimant's Witness Statement of Oath. It is settled law that documentary evidence is the hanger that oral evidence is determined.

DIAMOND BANK PLC. PAMOB WEST-AFRICA LTD. (2014) LPELR – 24337 (CA) was cited.

Learned counsel submits, that a Lease Agreement like the one in question is contractual in nature and governed by the law of contract, the terms contained therein, and the law implies damages to every breach. Then a party in breach of the terms of the contract is liable in damages.

NICON HOTELS VS. NENE D.C. LTD. (2007) 13 NWLR (Pt. 1051) Page 237 was cited.

Learned counsel contends, that the failure for the Defendants to cross-examine the PW1 leads only to one irresistible conclusion, that the evidence led by

the PW1 on all oral matters are accepted as the truth of the matter as led in evidence. The entire evidence of the Claimants remains unchallenged and the presumption is that, unchallenged and uncontradicted evidence are deemed admitted.

OFORLETE VS. STATE (2000) 12 NWLR (Pt. 681) 415 at 436 Para B – C and MON KOIN VS. ODILI (2010) 2 NWLR (Pt. 1179) 419 at 442 para D – F were cited.

Learned counsel submits that with respect to the cost of litigation as claimed in the 4th claim of the Writ of Summons and Statement of Claim, it is the law that cost follows event and a successful party is entitled to cost unless there are special reasons to deprive him of his settlement.

***HUNG & ORS VS. E.C. INVESTMENT CO.
(NIG) LTD. & ANORS (2016) LPELR 42125 (CA)***

was cited.

Learned counsel concludes by urging this Honourable Court to grant the Claimant's reliefs as claimed.

COURT:-

I have read and assimilated the claims of the Claimant and the corresponding evidence, both oral and documentary.

Indeed, a party who seeks Judgment in his favour is required by law to produce evidence to support his pleadings. I hereby adopt the issue formulated by the Claimant as the sole issue for determination to wit;
“whether the Claimant has proved its case on the

preponderance of evidence in the circumstance of this case.”

What is contract, in law?

Legally speaking, a contract generally is an agreement between parties which creates binding obligation on the part of the contracting parties. There shall be offer, acceptance, intention to create legal relationship and the contracting parties must have the desired capacity to enter into such a contract.

OJO VS. ABT ASSOCIATES INCORPORATION & ANOR (2014) LPELR – 22860 (CA).

The law is now settled beyond peradventure that where the content of a document is clear, express and unambiguous, court should interpret such literary.

See JOHN VS. UNIVERSITY OF ILORIN (2012) LPELR - 9309; DAPIALONG VS. DARIYE (2007)8 NWLR (Pt. 1036) 239 at 412 Paragraph E, Pages 25 – 26.

From the documents annexed as Exhibits “1”, “2”, “3”, “4”, “5” and “6” to the affidavit evidence in support of the Claimant’s Writ of Summons, Claimant and Defendants did have a contract or agreement for the lease of that property lying and situate at No. 5 Elbe Close Off. Panama Street of IBB Way Maitama Abuja, FCT.

There was offer; acceptance and consideration. There are five ingredients which must be present for a contract to be valid in law, offer, acceptance, consideration, capacity to contract and intention to create a legal relationship.

Aforementioned ingredients are indeed autonomous, unequal in the sense that a contract cannot be formed if any of them is absent. All the five ingredients are sine qua-non for a valid contract.

See ***ORIENT BANK (NIG.) LTD. VS. BILANTE (1997) NWLR (Pt. 515) 37 per ODILI JCA (as he then was).***

Where parties enter into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is so because, a party cannot resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to them, this indeed is the whole essence of the doctrine of sanctity of contract or agreement.

The Court is under an obligation to construe the terms of the contract or agreement, and terms only, in the event of an action arising there from.

SEE BOOKSHOP HOUSE VS. STATMEN COUSOLFACTS (1986) 3 NWLR (Pt. 26) 87. Per Tobi JSC (as he then was) Page 67 Paragraphs A – E; ARYAY LTD. & ORS VS. U.A.M.S LTD. (2003) 2 – 3 SC. 1.

A careful study of the said Exhibit “1” entered into on the 24th October, 2016 by both parties, will show that Defendants who entered into the said agreement with the Claimant, are clearly in breach of the terms therein.

Defendants who were served with the Writ of Summons and other Processes, cum Hearing Notice,

refused and or ignored to participate in the entire proceedings.

It is though the right of a Defendant to choose participating in a judicial proceeding, that does not extend to the bindingness of Judgment on such a Defendant.

Indeed, it is elementary that where the Defendants fail to enter Appearance or give evidence at the trials, his statement of defence is deemed abandoned. This is because, pleadings by their nature and character, cannot speak. They speak through witnesses and as long as a party refused or fail to file, Appear or call witnesses to articulate his side of the story and content, they remain dormant before the court.

Thus, since the Defendants did not enter appearance nor file any process, the onus or burden of proof on the Claimant would be discharged on minimal proof *AMA VS UBA PLC. (1997) 4 NWLR (Pt. 498) 181.*

Let it be noted, that this matter came up first on the 27th February, 2020; and subsequently for about 8 other times, the Defendants never appeared and there was no form of representation by the Defendants.

The law is trite regarding the bindingness of terms of contract or agreement on the parties.

Where parties enter into agreement in written, they are bound by the terms thereof. The court and indeed any other party will not allow anything to be read into the agreement, terms on which the parties were not in agreement, or not ad – idem.

***LARMIE VS DATA PROCESSING
MAINTENANCE AND SERVICES LTD (2005) 12
SC (Pt. 1) 93 at 103.***

Indeed, it is an elementary principle of law that when an allegation of facts is made by a party and it is not controverted by the other party, the allegation must be taken undisputed.

***MAERSK LINE VS ADDIDE INVEST. LTD
(2012) 11 NWLR Page 317.***

Where tenancy relationship between landlord and tenant is governed by Tenancy Agreement, the said tenancy becomes contractual which is subject to the terms and conditions therein contained.

Let me state here, that from the statement on oath of the Claimant's witness, the Defendants were due to pay N22,400,000.00 (Twenty Two Million, Four

Hundred Thousand Naira) only from the 1st of December, 2018, in line with the terms of the lease Agreement in order to continue with the lease term. It is further stated that at some point, PW1 noticed that the Defendants had converted the property to a commercial eatery for other Chinese nationals who resorted to the property as their brothel and joint, instead of the agreed purpose of residential and office use of the property. That lots of the amenities that were in good condition and state were no longer functioning due to mismanagement and poor handling by the Defendants. That the Defendants equally sub – leted one of the units of 3 bedroom duplexes to another person.

The veracity and accuracy of the evidence stated above were not discredited by Defendants throughout the trial. It is trite that where evidence is

given by a party to any proceedings is not challenged or put in issue by the other party who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it.

To this end, I am in agreement with the submission of learned counsel for the Claimant on this score. See ***ALHAJI J.A ODUTOLA VS PAPERSACK (2006) 18 NWLR (Pt. 1012) 470 at 474 ratio 1 and 4, (2007) W.R.N 1.***

Claimant has been able to establish its case and I therefore am not in any doubt that he is entitled to the Judgment of this Court.

Judgment on the whole is hereby entered as per the reliefs sought by the Claimant.

In consequence whereof, I hereby make the following Orders:-

Consequently, I hereby declare that the Defendants are in breach of terms of the lease agreement between them and Claimant.

Claimant's case succeeds on the balance of probability. I hereby make the following orders;

- a. That the sum of N5,000,000.00 (Five Million Naira) as general damages for breach of the terms of the lease agreement, by way of failure to observe the payment terms, subletting part of No. 5 Elbe Close, Off Panama Street, Off IBB way, Maitama, Abuja without consent and making structural alterations and defect to the entire No. 5 Elbe Close equally without the

written consent of the Claimant is hereby awarded.

- b. Defendants are hereby ordered to immediately vacate and yield up vacant possession of No. 5 Elbe Close Off Panama Close, Off IBB Way, Maitama, Abuja, forthwith.
- c. The sum of N29,403,000.00 (Twenty Nine Million Four Hundred and Three Thousand Naira) only being cost of estimated repair works to be carried out by the Claimant in order to restore back No. 5 Elbe Close, Off Panama Close, Off IBB Way, Maitama, Abuja, FCT is hereby awarded against the Defendants.
- d. The sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) only being legal fees for prosecuting this suit is hereby awarded.

e. 10% post judgment interest, from the date of this judgment until the Judgment sum is fully liquidated is hereby awarded.

Above is the judgment of this court.

Justice Y. Halilu
Hon. Judge
11th March, 2022

APPEARANCES

O.A Obayomi, Esq., with E.P Offiong, Esq. – for the Claimant.

Defendant not in court and not represented.